

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
MONTGOMERY COUNTY, MARYLAND**

**Homeland Village Community Association,**  
Complainant

v.

Case **#79-10**  
June 24, 2011

**John Vollmer, Christopher Vollmer, and  
Tamara Vollmer**  
Respondents

**JUDGMENT BY DEFAULT**

This dispute came before a panel (Commissioners Farrar, Henderson and Wilson) of the Commission on Complainant's application for a default judgment against Respondent pursuant to Chapter 10B of the Montgomery County Code, COMCOR Chapter 10B.06.01, and the Commission's *Default Judgment Procedures*.

The panel has reviewed the record and makes the following findings of fact and conclusions of law.

**Findings of Fact**

1. The Complainant is a homeowners association within the meaning of Section 11B-101 of the Real Property Article of the Code of Maryland, and its covenants are filed in the land records of Montgomery County, Maryland. (Commission Exhibit 1 at 41-200) (hereinafter, "CE1").

2. The Respondents own a lot subject to the covenants of the Complainant. Pursuant to a Deed of August 8, 2005, the Respondents took title to this lot which is located at 18045 Vintage River Terrace, Olney, Maryland. (CE1 at 35.)

3. Beginning in approximately May, 2007, the Respondents' lot became the subject of complaints from its neighbors. These complaints included trash and litter in the yard, lack of maintenance of the yards, lack of maintenance on the house itself, improper storage of trash containers and household items in the yards, and lack of proper window coverings. The Complainant issued several

written notices on these matters to Respondents from May, 2007, through June, 2010. (CE1 at 13-32.)

4. Respondents did not correct the alleged violations and on June 2, 2010, Complainant notified Respondents that it would hold a hearing on the violations on June 24, 2010. (CE1 at 16.) Respondents refused to accept the certified mail notice. (CE1 at 15.) On June 23, 2010, Complainant notified Respondents of the decision of its Board of Directors that the Respondents were in violation of the governing documents of the Complainant in the following respects:

- a) improper storage of household items;
- b) improper storage of trash containers;
- c) failure to remove trash and litter from the lot;
- d) failure to maintain the lot in good condition, including failure to replace foundation plantings, shrubs and gardens;
- e) failure to mow grass in rear yard.

This letter also advised Respondents of their right to dispute the Board's decision with this Commission. (CE1 at 273.) However, there is no record that they ever filed a complaint with the Commission.

5. The Complainant filed this complaint on October 6, 2010, requesting the Commission to order the Respondents to remove the violations and to pay the Complainant its \$50.00 filing fee. (CE1 at 3.)

6. On October 8, 2010, the Commission's staff notified the Respondents of the complaint and instructed them to file their answer within 30 days. (CE1 at 270.)

7. Respondents filed no answer, and on December 7, 2010, the staff notified Complainant that the Respondents had not answered the complaint and that the Complainant could request an order of default against them. Staff sent a copy of this notice to Respondents with a copy of the Commission's *Default Judgment Procedures*. (CE1 at 272.) Again, there was no reply from Respondents, and on January 20, 2011, Complainant filed its request for a default. (CE1 at 275-276.)

8. On January 31, 2011, the staff notified both parties that the request for entry of default would be on the Commission's agenda for March 2, 2011, and that the staff recommended that the Commission grant the request. Staff sent a copy of its Case Summary to both parties with a cover letter advising both parties of their right to comment on the staff's recommendation. (CE1 at 277, 1-2.) Respondents filed no comments on the staff's Case Summary.

9. On March 2, 2011, the Commission accepted jurisdiction of the complaint and authorized the issuance of an order of default. Panel Chair Farrar signed the order and the staff mailed it by certified and regular mail to

Respondents at their address above and also by regular mail to 14701 Westbury Road, Rockville, Maryland (an address previously supplied by Complainant, CE1 at 29). This order required Respondents to show cause within 30 days why they did not file a timely answer to the complaint, and what defense they had to the allegations of the Complaint. (CE1 at 281-282.) Respondents signed the certified mail receipt for the order of default.

10. Respondents have not filed any answer to the order of default.

11. Article X of the Complainant's Declaration of Covenants generally prohibits the creation of nuisances (CE1 at 60), and specifically prohibits the accumulation of litter, refuse, and waste; requires trash containers and play equipment to be stored out of public view, and prohibits certain types of window coverings. (CE1 at 59-62.) Article XV gives Complainant the authority to enforce its rules through legal action and states that the costs of such enforcement, including attorneys fees, shall be the responsibility of the lot owners. (CE1 at 73-74.) The rules of the Complainant require the owners to maintain the yards around their homes in good condition. (CE1 at 246.)

12. Respondent's lot contains trash, improperly stored trash containers and household items, lacks plantings around its foundation, and the landscaping and grass are not in good condition. However, Complainant seems to concede that the window coverings are no longer a violation. (CE1 at 276.)

### **Conclusions of Law**

1. The Commission has subject matter jurisdiction of this dispute pursuant to Section 10B-8(3)(A)(i) of the Montgomery County Code.

2. The Commission has personal jurisdiction over the Respondents.

3. The proper standard of review of a board decision requiring a person to take any action regarding his unit or lot is set forth in *Kirkley v. Seipelt*, 182 A.2d 430 (Md. 1957). In that case the Court of Appeals held that a board's decision restricting a member's right to make changes to his lot must be upheld if it is based on a reason that bears some relation to an overall plan of development or to the other buildings in the community, made with a good reason and in good faith.

3. The lot in question is subject to the Complainant's governing documents and rules and regulations. These documents prohibit the making of any changes to the lot without the advance approval of the Complainant, and they further require Respondents to maintain the lot in good condition and appearance.

4. The Respondents are in violation of the governing documents by allowing trash and debris to accumulate on their lot, by improperly storing trash containers and household items in public view, by failing to replant the foundation shrubbery, by failing to maintain the grass and gardens in good condition. Such conditions set this home apart from its neighbors, are unsightly, and are possibly unsanitary.

5. We find that Complainant's decision holding Respondents in violation of the association documents to be proper under the standard of *Kirkley v. Seipelt*.

6. The panel further finds that Complainant is entitled to be reimbursed for its filing fee in this matter by Respondents.

### **ORDER**

It is, therefore, this 24th day of June, 2011, by the Commission on Common Ownership Communities of Montgomery County, Maryland,

ORDERED that the Respondents, Christopher, John, and Tamara Vollmer, shall:

1. within 30 days from the date of this Order, remove all trash and litter from the lot adjacent to their home; remove all trash containers and household items from public view and keep them that way; replant the foundation of the home with shrubs approved by the Complainant, reseed their lawn and keep the grass height to no more than 4 inches, and maintain the gardens in good condition, without weeds; and

2. pay to the Complainant the sum of \$50.00 as its filing fee in this matter within 30 days after the date of this Judgment; and,

3. it is further:

ORDERED that should Respondent fail to comply with this Order, the Complainant may enter on the property to perform the necessary work required by this order; and if it does so, it may charge Respondents for its costs to do so and may proceed to collect the sum due in any manner authorized by its association documents or by statute.

The panel reminds Respondents that pursuant to Chapter 10B, Section 13(j), a violation of this Order is a Class A violation of the Montgomery County Code and subject to a fine of \$500.00 per day.

Any party aggrieved by this decision may file an appeal to the Circuit Court of Montgomery County, Maryland within 30 days from the date of this

decision pursuant to the Maryland Rules of Procedure governing appeals from administrative decisions.

Commissioners Henderson and Wilson concur in this decision.

COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
FOR MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_  
Allen Farrar, Panel Chair  
June 24, 2011